IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

LEVERAGED LAND CO., LLC, an Arizona limited liability company, and NORMAN MONTGOMERY and CHERYL MONTGOMERY, Plaintiffs/Appellees, RAVEN II HOLDINGS, L.L.C., an Arizona limited liability company, and HANNA 120 HOLDINGS, L.L.C., an Arizona limited liability company, Intervenors/Appellees, v. VEM CORPORATION, an Arizona corporation, and CP MANAGEMENT CORPORATION, an Arizona corporation, Defendants/Appellants.	2 CA-CV 2006-0219 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200500270

Honorable Stephen F. McCarville, Judge

AFFIRMED

Quarles & Brady LLP
By Craig H. Kaufman and Jeremy A. Lite
Tucson
Attorneys for Plaintiffs/Appellees

Snell & Wilmer LLP
By William N. Poorten III
and Kimberly Van Amburg
Tucson
Attorneys for Intervenors/Appellees

Law Office of Mark R. Jewett, P.C.
By Mark R. Jewett
Scottsdale
Attorneys for Defendants/Appellants

V Á S Q U E Z, Judge.

¶1 In this tax lien foreclosure and quiet title action, appellant CP Management Corporation, purportedly acting on behalf of defendant VEM Corporation, appeals from the trial court's order denying its motion to set aside default judgment and motion for a new trial, made pursuant to Rules 55(c) and 59(j), Ariz. R. Civ. P., 16 A.R.S., Pt. 2. For the reasons set forth below, we affirm.

Background and Procedural History

¶2 Appellees Norman and Cheryl Montgomery and Leveraged Land Company (collectively "LLC") purchased a tax lien on real property located in Pinal County. Under Arizona law, a tax levied on real property constitutes a lien on the assessed property. A.R.S. § 42-17153(A). The county treasurer is authorized to sell tax liens to secure the payment of unpaid delinquent taxes. A.R.S. § 42-18101. "The purchaser of a tax lien receives a certificate of purchase, known as a tax lien certificate, which . . . serves as evidence entitling the holder to a deed [to the property, provided] certain statutory conditions are met." *Daystar Invs., L.L.C. v. Maricopa County Treasurer*, 207 Ariz. 569, ¶ 3, 88 P.3d 1181,

1182 (App. 2004); A.R.S. § 42-18118. The record owner of the property; the owner's agent, assignee, or attorney; or any person having a legal or equitable interest in the property may redeem the tax lien by paying certain amounts. *See* A.R.S.§§ 42-18151, 42-18153. "If a tax lien certificate is not redeemed within three years of the date of purchase, the purchaser may bring an action in the superior court to foreclose the property owner's right to redeem." *Sun Valley Fin. Servs. of Phoenix, L.L.C. v. Guzman*, 212 Ariz. 495, ¶ 6, 134 P.3d 400, 402 (App. 2006); *see also* A.R.S. § 42-18201.

¶3 In March 2005, LLC filed against the property owner and other interested parties a "complaint and petition" to foreclose their rights to redeem the tax lien LLC had purchased and to quiet title to the property in LLC. The named defendants included VEM Corporation, the beneficiary under a deed of trust recorded on the property in March 1999. In May 2005, LLC filed an affidavit stating it had served VEM by publication pursuant to Rule 4.1(n), Ariz. R. Civ. P., 16 A.R.S., Pt. 1, and also through the office of the Arizona Corporation Commission pursuant to Rule 4.1(*l*). On the same day, LLC filed an application for entry of default against VEM, pursuant to Rule 55(a), Ariz. R. Civ. P., 16 A.R.S., Pt. 2. In June 2005, after a hearing at which VEM failed to appear, the trial court entered a default judgment foreclosing VEM's right to redeem the tax lien and quieting title to the property in LLC. LLC subsequently sold the property.

¶4 In March 2006, CP Management, purporting to be the assignee of VEM, moved to set aside the default judgment pursuant to Rules 55(c) and 60(c), Ariz. R. Civ. P.,

16 A.R.S., Pt. 1. It argued the judgment was void for lack of jurisdiction because service on VEM by publication and through the Arizona Corporation Commission had been improper. CP Management asserted VEM had assigned its beneficial interest under the deed of trust to CP Management in March 2000. When CP Management filed its motion, however, the assignment had not been recorded. In the alternative, CP Management asserted it had shown good cause entitling it to a new trial pursuant to Rule 59(j).[1] The trial court denied CP Management's motion, finding: "CP Management did not have a recorded interest in the property in question and therefore has no standing to contest the tax lien foreclosure." This appeal followed.[2]

Standard of Review

¶5 We review for an abuse of discretion a trial court's denial of a motion to set aside a default judgment. *Hilgeman v. Am. Mortgage Sec., Inc.*, 196 Ariz. 215, ¶ 7, 994 P.2d 1030, 1033 (App. 2000). We apply the same standard in reviewing a trial court's decision whether to grant a new trial on the ground stated in Rule 59(j). *See Clark v. Clark*, 71 Ariz. 194, 196, 225 P.2d 486, 487 (1950).

---

[1]That rule provides: "When judgment has been rendered on service by publication, and the defendant has not appeared, a new trial may be granted upon application of the defendant for good cause shown by affidavit, made within one year after rendition of the judgment." Rule 59(j)(1).

[2]The property owner filed a separate appeal in *Leveraged Land Co. v. Hodges*, 2 CA-CV 2006-0210 (memorandum decision filed Aug. 8, 2007). Neither party asserts the issues in this appeal are governed by the outcome of the property owner's appeal, nor did either file a motion to consolidate the appeals.

Discussion

¶6 CP Management asserts it had received an assignment of VEM's beneficial interest in the deed of trust on the property and "stands in the shoes of VEM taking those rights and remedies VEM would have had." As we understand CP Management's argument, it believes the purported assignment, standing alone, entitles it to challenge the default judgment on the ground that VEM's due process right to notice of the pending foreclosure action was violated.

¶7 LLC contends that, to the extent VEM's assignment to CP Management must be recognized, VEM no longer had an interest in the property when LLC sued to foreclose its lien; thus, VEM had no shoes for CP Management to stand in. An assignee of a beneficial interest in a deed of trust "'stands in the shoes'" of the assignor, taking only those rights and remedies the assignor would have had. *Hunnicutt Constr., Inc. v. Stewart Title & Trust of Tucson Trust No. 3496*, 187 Ariz. 301, 304, 928 P.2d 725, 728 (App. 1996), *quoting Van Waters & Rogers, Inc. v. Interchange Res., Inc.*, 14 Ariz. App. 414, 417, 484 P.2d 26, 29 (1971).

¶8 Although VEM may have assigned its beneficial interest to CP Management before LLC's filing of this action, VEM—not CP Management—was the beneficiary of record under the deed of trust. After being served, VEM was entitled to appear in the lawsuit if only to move to have CP Management substituted as the real party in interest. *See*

Ariz. R. Civ. P. 19, 16 A.R.S., Pt. 1. But VEM never appeared in the action, despite the trial court's finding that it had been properly served. On this issue, the trial court found:

> According to the records at the corporation commission, VEM was no longer active and did not have a valid address for its statutory agent as required. Accordingly, service on said corporation was effected by service on the Arizona Corporation Commission as allowed pursuant to A.R.S. §10-504 and Rule 4.1 of the Arizona Rules of Civil Procedure.

Based upon our review of the record, we cannot say the trial court abused its discretion in making this determination.

¶9 LLC also contends, and the trial court found: "CP Management did not have a recorded interest in the property in question and therefore has no standing to contest the tax lien foreclosure." We agree. "[A]ny person who receives an assignment of beneficial interest and does not record it is in jeopardy of having the assignment declared invalid as against a subsequent purchaser for value without notice." *Eardley v. Greenberg*, 164 Ariz. 261, 265, 792 P.2d 724, 728 (1990). As provided in A.R.S. § 33-411(A):

> No instrument affecting real property gives notice of its contents to subsequent purchasers or encumbrance holders for valuable consideration without notice, unless recorded as provided by law in the office of the county recorder of the county in which the property is located.

There is simply no evidence that LLC knew or should have been aware of VEM's assignment of its beneficial interest to CP Management before or during the pendency of this action. The trial court did not abuse its discretion when it found CP Management lacked standing to contest the default judgment.

¶10 Moreover, even assuming CP Management "stood in the shoes" of VEM as a result of the assignment, CP Management was not a party to the lawsuit. Generally, a person who is not a party to an action is not aggrieved and cannot appeal from findings adverse to that person. *Great Southwest Fire Ins. Co. v. Triple "I" Ins. Servs., Inc.*, 151 Ariz. 280, 282, 727 P.2d 333, 335 (App. 1986), *vacated in part on other grounds*, 151 Ariz. 283, 727 P.2d 336 (1986) (persons dismissed as defendants were not parties aggrieved by the judgment).

¶11 As we have noted, CP Management was never joined as a party, nor did it ever move to intervene in the proceedings pursuant to Rule 24(a), Ariz. R. Civ. P., 16 A.R.S., Pt. 1. *See Gonzalez-Burgueno v. Nat'l Indem. Co.*, 134 Ariz. 383, 385, 656 P.2d 1244, 1246 (App. 1982). Rule 24(a) provides:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24(b) provides:

> Upon timely application anyone may be permitted to intervene in an action:
>
> 1. When a statute confers a conditional right to intervene.

> 2. When an applicant's claim or defense and the main action have a question of law or fact in common.
>
> In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

¶12 A motion to intervene may be timely filed even after a judgment has been entered. *See Weaver v. Synthes, Ltd.*, 162 Ariz. 442, 446, 784 P.2d 268, 272 (App. 1989) (post-judgment motions to intervene not favored but not necessarily untimely); *see also Liston v. Butler*, 4 Ariz. App. 460, 466, 421 P.2d 542, 548 (1966) ("[O]ne whose interests are directly affected by a judgment in a proceeding to which he is not a party, may timely move to set aside such judgment, and the trial court after notice and hearing may set aside said judgment and grant a motion to intervene.").

¶13 Here, we need not decide the issue of timeliness because CP Management never filed a motion to intervene and has offered no meaningful explanation for its failure to do so. It relies on two cases, neither of which supports its position. In *Phoenix Title & Trust Co. v. Stewart*, 337 F.2d 978, 980-81 (9th Cir. 1964), the Ninth Circuit Court of Appeals decided whether Phoenix Title's unrecorded security interest was valid as against a federal tax lien on a property. That case simply has no application here, however, because Phoenix Title itself instituted that proceeding in an attempt to determine the validity of its security interest. *Id*. at 980. Here, in contrast, CP Management never sought to intervene in the action to protect its interests.

¶14 In *Rodney v. Arizona Bank*, 172 Ariz. 221, 222, 836 P.2d 434, 435 (App. 1992), a title company filed an interpleader action naming as defendants two parties with competing claims to payments under a promissory note. Again, unlike here, the parties with competing interests were properly before the court without need for a motion to intervene. Although CP Management might have been allowed to challenge the default judgment in this case under Rules 55(c) or 60(c), it failed to follow the proper procedure to do so. Similarly, because CP Management did not move to intervene in the action and was not otherwise made a party, it was not entitled to bring a motion for new trial under Rule 59(j).

Conclusion

¶15 For the foregoing reasons, we affirm the trial court's order denying CP Management's motion to set aside judgment and motion for new trial.

_____
GARYE L. VÁSQUEZ, Judge

CONCURRING:

_____
PETER J. ECKERSTROM, Presiding Judge

_____
PHILIP G. ESPINOSA, Judge